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5 BEFORE THE INSURANCE COMMISSIONER
6 OF THE STATE OF WASHINGTON

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8 In the Matter of the Application regarding the
9 Conversion and Acquisition of Control of
10 Premera Blue Cross and its Affiliates

OIC Docket No. G02-45

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12 REQUEST FOR EMERGENCY
13 HEARING REGARDING DISCLOSURE
14 OF MATERIAL DESIGNATED
15 ATTORNEYS' EYES ONLY

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17 The Washington State Medical Association ("WSMA") requests an emergency hearing in
18 front of the Special Master to determine whether it is permissible to disclose Attorneys' Eyes
19 Only ("AEO") information to the party's expert witnesses.

20 I. BACKGROUND

21 At the end of the day on October 10, 2003, Premera released to the Interveners redacted
22 versions of the draft consultant reports prepared at the behest of the Office of Insurance
23 Commissioner ("OIC") Staff.

One set of the reports contained information that Premera argues should be Attorneys' Eyes
Only ("AEO"). Whether Premera's designations were overly aggressive are not at issue in this
motion.

1 In his Eighth Order, the Commissioner set out the procedures by which AEO can be
2 disclosed to expert witnesses.

3 Consistent with those procedures, the WSMA notified Premera on October 21 of its intention
4 to disclose AEO information to Dr. Jeff Collins and Robert Perna.

5 Premera made a timely objection on October 24 and on October 25 served notices of
6 depositions on the WSMA's expert witnesses. That same day, counsel for WSMA contacted
7 Premera's counsel in an attempt to reach an informal resolution of this dispute, as required by the
8 Commissioner's order. Those efforts were unavailing. Moreover, Premera refused to have the
9 matter heard on an emergency basis.

10 11 II. ARGUMENT

12 In its October 24 letter, Premera sets out four objections to disclosure of AEO to the
13 WSMA's experts.

14 The first two objections, by implication, impugn the integrity of Dr. Collins and Mr.
15 Perna, without any basis to suggest that either is untrustworthy or has a record of prior
16 conduct that raised doubts about their honesty. Indeed, both have had a long history of being
17 entrusted with sensitive information.

18 Dr. Collins is serving a one-year term as the President of the WSMA. Premera writes that
19 "his medical group and his constituents/members, as current and/or future providers of
20 medical services, have much to gain" from obtaining AEO information. Premera Letter of
21 October 24, pp. 1-2.

1 Mr. Perna, Premera asserts, “would have a field day” with AEO material in his role as
2 WSMA’s Director of Health Care Economics. Id. at 2.

3 Premera’s counsel apparently cannot resist adding a patronizing comment about whether
4 the experts have been apprised of the risks of any unauthorized disclosure.

5 Without waiving the attorney-client privilege, it is sufficient for this purpose to note that
6 both of the WSMA’s expert witnesses have been advised and have agreed to sign the
7 Declaration as required by Appendix A to the Eighth Order.

8 Contrary to Premera’s insinuation of some nefarious ulterior motive, the WSMA’s sole
9 reason behind seeking disclosure of the AEO material is to enable its experts to provide a
10 thorough and informed evaluation of Premera’s effort to become a for-profit corporation.

11 The sole reason the WSMA did not retain outside experts was to conserve resources.
12 Premera has used its vast wealth to wage a war of attrition that has nearly depleted what the
13 WSMA can afford to spend in opposing the conversion.

14 The other two objections Premera makes relate to the alleged inadequacy of the purpose
15 and scope of the disclosure. Id. at 2. The WSMA’s disclosure request was identical to other
16 Interveners’ requests to which Premera lodged no objection. The WSMA will furnish greater
17 specificity should the Special Master find that it is necessary to do so.

18 According to Section 3(b)(ii)(3) of the Protective Order, “If the person for whom the
19 disclosure is sought is an expert or consultant of the party requesting the disclosure, then the
20 party objecting to the disclosure shall have the burden of proving to the Special Master the
21 inappropriateness of such disclosure.” The burden shifts if the desired disclosure is to
22 someone who is not an expert or consultant to the requesting party.
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1 We believe that the burden should properly be placed on Premera: Dr. Collins and Mr.
2 Perna are eminently qualified to serve as experts regarding patient care, practice viability,
3 Premera's role in the marketplace, and a multitude of other topics relevant to Premera's
4 conversion proposal.

5 Regardless of which party is ultimately determined to carry the burden, Premera has
6 failed to make any showing that either of the WSMA's experts are likely to violate the terms
7 of the Protective Order and commit an unauthorized disclosure of material marked
8 Attorneys' Eyes Only.

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10 III. RELIEF REQUESTED

11 The WSMA requests the Special Master grant the following relief:

- 12 1. Convene an emergency hearing to resolve this dispute.
- 13 2. Permit disclosure of AEO material contained in the OIC Staff draft consultant
14 reports, and in the final consultant reports, to the WSMA's expert witnesses,
15 namely, Robert Perna and Dr. Jeff Collins.
- 16 3. Strike the depositions of Mr. Perna and Dr. Collins that Premera has requested.
- 17 4. Extend the deadline for the filing of WSMA's expert reports to November 17,
18 2003.

19 Respectfully submitted this 26th day of October 2003.

20 COOPERSMITH HEALTH LAW GROUP, P.S.

21 By _____
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23 Attorney for Intervener WSMA